In the principal case the liability of the stockholders for the torts of the corporation is not penal in nature; it is not a liability in the form of a forfeiture for the failure to do, or for the doing of something required or prohibited by statute, irrespective of the amount of injury occasioned to those for whose benefit the statute is to operate.[7] In so far as the stockholders' liability applies to the debts of the corporation, it is apparent that the liability is of a contractual nature; the intending stockholder undertakes to be bound by the general law, which is construed to involve an offer on the part of the stockholders to become personally liable for their proportionate share of the corporate debts contracted while they are stockholders.[8] But the conception of the contractual nature of the stockholders' liability for the torts of the corporation is difficult to understand. It is rather strained to say that the stockholders offer to assume liability for damages to any one who may be injured by the tortious acts of the corporation. On the other hand, it is not a direct tortious liability, which even though statutory would abate on the death of the wrongdoer, unless it is expressly provided that the liability survives.[9] It is more like the liability of a surety; the stockholders are not considered the wrongdoers themselves and their liability is primary only in the sense that it is not necessary that the person injured by the tortious act of the corporation should first exhaust his remedies against the corporation before proceeding against the stockholders.[10] It may be better to consider the stockholders' liability for torts of the corporation simply as a statutory liability, which the legislature intended should survive. In so far as the statute imposes a stockholders' liability for the debts of the corporation, it is reasonable to hold that the liability is contractual in nature and should not die with the stockholder.[11] It appears reasonable to hold that the liability for the torts of the corporation imposed by the same statute was intended to be as complete as that for the debts of the corporation, i. e., that this liability should survive the stockholder.

F. H. M.

DEEDS: A FRAUDULENT GRANTEE FROM AN ILLITERATE GRANTOR CAN PASS NO TITLE TO A BONA FIDE PURCHASER.—The

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[7] Cable v. McCune (1858), 26 Miss. 371, 72 Am. Dec. 214; Rider v. Fritchey (1892), 49 Ohio 285, 30 N. E. 692, 15 L. R. A. 513.

[8] Kennedy v. Cal. Sav. Bank (1892), 97 Cal. 93, 31 Pac. 846, 33 Am. St. Rep. 163; Ferguson v. Sherman (1897), 116 Cal. 169, 47 Pac. 1023, 37 L. R. A. 622; 2 Morawetz, Private Corporations (2d. ed.), §§ 870-872; 4 Thompson, Corporations (2d ed.), § 4790.

[9] Harker v. Clark (1881), 57 Cal. 245; Fowden v. Pac. Coast S. S. Co. (1906), 149 Cal. 151, 86 Pac. 178; Penn. Co. v. Davis (1891), 4 Ind. App. 51, 29 N. E. 425.

[10] Foreign Mines Dev. Co. v. Boyes (1910), 180 Fed. 594; see 1 California Law Review, 61.

[11] Richmond v. Irons (1887), 121 U. S. 27, 30 L. Ed. 864, 7 Sup. Ct. Rep. 788; supra, n. 5.

term "bona fide purchaser," signifies to the layman a person entitled in all cases to the protection of the law. While it is the policy of the law to accord this protection whenever possible, as in the case of purchasers of negotiable bills and notes,[1] bona fide assignees of mortgages for valuable consideration[2] and other cases, it must be recognized that there are certain limits to the application of this doctrine. In cases of forgery[3] and alteration,[4] or larceny at common law,[5] the bona fide purchaser cannot recover, on the theory that the instrument is not the act of the party, and there is no intent on the part of the maker to put the paper into circulation. If, however, the maker has been negligent, there may be a recovery against him.[6] The case of *Chickasaw Loan and Trust Company v. Mills*[7] presents a situation where the bona fide purchaser of a deed was not protected. In that case, the original grantor, an illiterate Indian, signed a deed to a certain tract of land, induced by the fraud and deceit of the grantee to believe that he was signing a mortgage for groceries. It was held that the plaintiff, a bona fide purchaser from the fraudulent grantee, could not obtain the land, the deed not being the act of the defendant, by reason of the manner in which it was obtained, the deceit practiced amounting to forgery under the law of Oklahoma.[8] The decision was based on the ground that the deed not being the act of defendant, no title passed, nor could there be estoppel because the defendant neither intentionally nor negligently furnished the means by which the plaintiff was deceived into parting with value.

It is agreed that one who is negligent in signing an instrument without knowing the contents is liable thereon to third parties. The question is when is one guilty of negligence? In the case of

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[1] Daniel, Negotiable Instruments (6th ed.), Chap. 24, p. 885; N. I. L., § 57; 3 R. C. L., Bills & Notes, § 207.

[2] Sanford v. Pettit (1890), 83 Mich. 499, 47 N. W. 357; Satterthwaite v. Ellis (1901), 129 N. C. 67, 39 S. E. 726; Carpenter v. Longan (1872), 16 Wall. 271, 21 L. Ed. 313; 27 Cyc. 1183.

[3] Hamilton Nat. Bank v. Nye (1906), 37 Ind. App. 464, 77 N. E. 295, 117 Am. St. Rep. 333; Yakima Valley Bank v. McAllister (1905), 37 Wash. 566, 79 Pac. 1119, 107 Am. St. Rep. 823, 1 L. R. A. (N. S.) 1075 and note. As to deeds see: Bagot v. Chapman (1907), 2 Chan. 222; Thoroughgood's Case (1852), 6 E. R. C. 202; Grimsley v. Singletary (1909), 133 Ga. 56, 65 S. E. 92, 134 Am. St. Rep. 196 and note; White v. Graves (1871), 107 Mass. 325, 9 Am. Rep. 38, 40; Somes v. Brewer (1824), 2 Pick. 184, 13 Am. Dec. 406, 419; Devlin, Deeds (3d ed.) Vol. 3, § 1275, p. 2381; Marden v. Dorthy (1899), 160 N. Y. 39, 54 N. E. 726, 46 L. R. A. 694 and cases cited in principal case.

[4] Daniel, Negotiable Instruments, Chap. 43; N. I. L., § 124; 3 R. C. L. Bills and Notes, §§ 213-215.

[5] Brannan, Neg. Inst. Law, § 16.

[6] The question of negligence is one of fact to be submitted to the jury: Abbott v. Rose (1873), 62 Me. 194, 16 Am. Rep. 427; Griffiths v. Kellogg (1876), 39 Wis. 290, 20 Am. Rep. 48.

[7] (Okla., June 27, 1916), 158 Pac. 1156.

[8] Criminal Code of Oklahoma, § 2646.

a person who can read, the general rule is that if he fails to examine the contents of the instrument he signs he is estopped to deny its validity.[9] But the cases differ as to what constitutes negligence on the part of a person who cannot read. In cases involving ordinary contracts, the decisions are about equally divided, between those which make the duty absolute that an illiterate person have the manuscript read to him by a person in whom he has a right to place confidence,[10] and those which make no such requirement.[11] In cases involving negotiable paper it is generally held that if a person, who cannot read, signs a bill or note without having it read over to him, relying on the representations of the payee, he is liable thereon to a bona fide purchaser.[12] It has also been held that if a note is signed in the belief that it is a paper of a different nature, it is still good in the hands of a bona fide purchaser.[13] The courts have decided those cases affording protection the bona fide purchaser under the well established rule that when one of two innocent parties must suffer by the act of a third, he who by his act has enabled such third person to cause the loss must sustain it.[14] As to deeds, however, the authorities seem in accord on the proposition that if a grantor, who cannot read, signs a deed under the impression that it is a document of a different nature, the deed is absolutely void, even in the hands of a bona fide purchaser,[15] and the above stated rule cannot be invoked in his favor. But on principle, why shouldn't this rule be applicable to situations covered by the principal case, for the grantor has affixed his signature, and by this means has enabled the grantee to mislead the bona fide purchaser? Moreover it is certainly far simpler for a grantor before signing to ascertain the character of the instrument, than for a purchaser to inquire of every preceding grantor as to the validity of the deeds on record.[16]

There seems to be a decided tendency to enlarge upon the doctrine of bona fide purchaser where bills and notes are concerned. The Negotiable Instruments Law, changing the common law and now in force in about forty-six states, provides that one who has

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[9] 138 Am. St. Rep. 810 note.

[10] Hawkins v. Hawkins (1875), 50 Cal. 558; Spurgin v. Traub (1872), 65 Ill. 170; Roach v. Karr (1877), 18 Kan. 529, 26 Am. Rep. 788; 138 Am. St. Rep. 810 and note.

[11] Williams v. Hamilton (1898), 104 Iowa 423, 73 N. W. 1029, 65 Am. St. Rep. 475; Schuylkill County v. Copley (1871), 67 Pa. St. 386, 5 Am. Rep. 441.

[12] 11 Am. St. Rep. 319 note; Ward v. Johnson (1892), 51 Minn. 480, 53 N. W. 766, 38 Am. St. Rep. 515.

[13] Supra, n. 12.

[14] First National Bank of Parkersburg v. Johns (1883), 22 W. Va. 520, 46 Am. Rep. 506; Tower v. Whip (1903), 53 W. Va. 158, 44 S. E. 179, 63 L. R. A. 937; See also 3 R. C. L. Bills and Notes, § 218.

[15] McArthur v. Johnson (1867), 61 N. C. 317, 93 Am. Dec. 593 note; 8 R. C. L., Deeds, p. 1030 et seq.; 10 R. C. L., Estoppel, p. 676, § 3; see also supra, n. 3.

[16] See dissenting opinion, Bartlett, J. in Marden v. Dorothy, supra, n. 3.

signed a negotiable instrument complete on its face is liable thereon to a holder in due course although it was never delivered by him, but lost or stolen from him.[17] The most marked step along this line seems to be that taken by Germany in regard to forged checks. Under that law a person who without negligence and in good faith, acquires a check on the face of which there is nothing irregular, acquires a good title, in spite of the fact that one of the indorsements was forged.[18] While no step has been taken toward enlarging upon the principle of bona fide purchase as applied to purchasers of deeds, such a step would certainly seem to make for greater security in business transactions and be in accord with sound public policy.

J. M. P.

ESCROWS: PRIOR CONTRACT NECESSARY TO CONSTITUTE ESCROW.—The case of Fitch v. Bunch,[1] a California case decided in 1866, clearly stated the rule for the first time, that to constitute a valid escrow the grantor and grantee must actually have contracted for the land sought to be conveyed; the terms must have been agreed upon and both must have assented to the instrument as a conveyance of the land, which the grantor would then have delivered and the grantee received, except for the agreement then made that it be delivered to a third person as depositary, to be kept by him until some specified condition should be performed by the grantee, and thereupon to be delivered to the grantee.

This rule has been adopted by several text writers,[2] the very language of Fitch v. Bunch usually being incorporated into the text and stated to be the general rule on the subject. The doctrine has, both by direct decisions and by dicta, been approved in other states,[3] and in 1891 the California court affirmed the rule.[4]

One eminent writer on real property has criticized the California decisions on the ground that escrow historically preceded

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[17] Norton, Bills & Notes (1914), Appendix, p. 601.
[18] See 9 Journal of Soc. of Comp. Leg. N. S. Vol. 9, p. 83.

[1] 30 Cal. 208.
[2] 1 Devlin, Deeds, § 313; 16 Cyc. 562, 564; 11 A. & E. Ency. 335; 10 R. C. L. 622; 3 Words & Phrases, 2464; the same principle is at the basis of an article on "Conditional Delivery of Deeds," by H. A. Bigelow, 26 Harvard Law Review, 565.
[3] Davis v. Brigham (1910), 56 Ore. 41, 107 Pac. 961, Ann. Cas. 1912 B, 1344 and note; Clark v. Campbell (1901), 23 Utah 569, 65 Pac. 496, 54 L. R. A. 508; Campbell v. Thomas (1877), 42 Wis. 437, 24 Am. Rep. 427; Seifert v. Lanz (1914), 29 N. D. 139, 150 N. W. 568; Popp v. Swanke (1887), 68 Wis. 364, 31 N. W. 916; Nichols v. Oppermann (1893), 6 Wash. 618, 34 Pac. 162; Hoig v. Adrian College (1876), 83 Ill. 267; Stanton v. Miller (1874), 58 N. Y. 192; Cooper v. Marek (Texas, 1914), 166 S. W. 58; Cagger v. Lansing (1870), 43 N. Y. 550, 552.
[4] Miller v. Sears (1891), 91 Cal. 282, 27 Pac. 589.